GOVERNMENT OF INDIA
COMMERCE AND INDUSTRY
LOK SABHA

STARRED QUESTION NO:19
ANSWERED ON:01.03.2005
AMENDMENT IN PATENT LAW
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Will the Minister of COMMERCE AND INDUSTRY be pleased to state:

(a) whether the Government has promulgatedOrdinance on Patents to amend the Patent Act;

(b) if so, the details thereof and the reasons therefor;

(c) whether measures have been taken to protect the interests of Indian pharmaceutical industry and others;

(d) if so, the details thereof;

(e) whether the Government has received any demand for review of the Patent Ordinance from any quarter; and

(f) if so, the details thereof and the initiatives the Government have taken in this regard?

Answer

THE MINISTER OF COMMERCE AND INDUSTRY (SHRI KAMAL NATH):

(a) The Patents (Amendment) Ordinance, 2004, effective from January 01, 2005, was promulgated on December 26, 2004, to inter-alia, comply with India`s international obligations contained in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which were due from January 01, 2005.

(b) The salient features of the amendments contained in the said Ordinance are as follows:

(a) to introduce product patent protection in all fields of technology (that is drugs, food and chemicals since product patent protection already exists for all other fields), as per Article 27 of the TRIPS Agreement;

(b)to modify the provisions relating to exclusive marketing rights (EMRs) since these were part of the transitional arrangements;

(c)to modify and clarify the provisions relating to patenting of software related inventions when they have technical application to industry or in combination with hardware;

(d)to modify the provisions relating to opposition procedure with a view to streamline system by having both pre-grant and post-grant opposition in the Patent Office;

(e) to introduce a provision for enabling grant of compulsory licence for export of medicines to countries which have insufficient or no manufacturing capacity, to meet emergent public health situations (permissible under paragraph 6 of the Doha Declaration on TRIPS and Public Health);

(f) to amend and strengthen the provisions relating to national security to guard against patenting abroad of dual use technologies;

(g) to amend the provisions relating to the Intellectual Property Appellate Board with a view to extending its jurisdiction to revocation of patents also;

(h) to amend certain provisions with a view to harmonizing them with the Patent Cooperation Treaty to which India is a signatory;

(i) to rationalize the provisions relating to time-lines with a view to reducing the processing time for patent applications, and to simplify the procedures. The time-frame for this set of amendments was most crucial as any slippage in meeting the January 01, 2005 deadline had the potential of inviting retaliatory action under the WTO disputes mechanism, particularly since India had availed of the entire ten-year transition period provided under the TRIPS Agreement. This default would also have created a legal vacuum for the `mail box` applications (the facilities of mailbox and EMRs were established by the first amendment to the patent law notified in March, 1999 which was made effective from January 01, 1995 for a period upto December 31, 2004), as there would not have been any mechanism to deal with them from January 01, 2005. This would have amounted to a specific default on the international commitment to examine and dispose of these cases. There would also have been a legal vacuum in respect of fresh applications after January 01, 2005, as the law was silent on whether the `mail box` provision would subsist or whether it would have ceased. Finally, there would have been an erosion of India`s credibility in the international field.

(c) and (d) In order to protect the interest of Indian industry, including the pharmaceutical industry, full transition period of ten years available under the TRIPS Agreement has been utilized. In the amendment, a provision has been made that in respect of applications for drugs and medicines filed before 1.1.2005, the rights of patentee shall accrue only from the date of grant of the patent, and not with retrospective effect. The Act also contains wide and adequate provision for compulsory licensing by government, as well as for export to other countries in certain circumstances. Further, given the importance of the issues, the Government undertook broad-based and extensive consultations involving different interest groups on aspects of the law. These included scientists, academicians, economists, representatives of various industry sectors (such as Pharmaceutical, biotech and software), chambers of commerce, private and public sector units, journalists, non-Governmental organizations, representatives of State Governments, lawyers and attorneys. During the wide ranging consultations, it emerged that not only were the amendments necessary to meet India`s international legal obligations, but also that the Indian industry as a whole has remarkably transformed itself over the past few years, and would stand to gain from a strengthened and balanced patent regime.

(e) and (f) Suggestions have been received from different organisations on the provisions of the patent law. These relate to patentability criteria, opposition procedures, compulsory licence and export to other countries. All views and concerns have been taken into account and will be future considered during discussions of the Bill in Parliament to replace the Ordinance.